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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/739,438	12/18/2003	Toby L. Burton	AUS920030592US1	9297
35525	7590	04/21/2008		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380				
EXAMINER				
ANWARI, MACEEH				
ART UNIT		PAPER NUMBER		
2144				
NOTIFICATION DATE		DELIVERY MODE		
04/21/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeciipaw.com

Office Action Summary

Application No.

10/739,438

Applicant(s)

BURTON ET AL.

Examiner

MACEEH ANWARI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the appeal brief filed on 1/30/2008, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Accordingly, **claims 1- 25** are still pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1- 25** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has recited the limitations of "at least

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one resource specification" and "at least one monitor specification" along with "a resource specification". There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1- 25** are rejected under 35 U.S.C. 102(e) as being anticipated by **Kundu** U.S. Publication No.: 205/0132041 A1.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Kundu teaches:

Claim 1: A method for provisioning resource monitors, the method comprising: providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a resource monitor, and wherein the

monitor specification includes both a deployment profile specification, defining a list of parameters that must be defined for each instance of the resource monitor that is deployed, and a response profile specification, defining parameters that are returned by deploying the resource monitor (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18 & 90; externally/internally measured parameters, monitoring gateway, monitoring entity and deployment manager); **providing at least one resource specification**, wherein a resource specification includes a definition of parameters that must be defined for each instance of a resource, and wherein the resource is the resource to be monitored (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured parameters, monitoring gateway and monitoring entity); **associating at least one monitor specification with a resource specification to form at least one resource monitor instance configuration profile** (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured parameters, monitoring gateway, monitoring entity and binding monitors to entities); **and storing the at least one resource monitor instance configuration profile** (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18; storing in repository).

Claim 2: further comprising: retrieving a resource monitor instance configuration profile for an instance of a given resource monitor assigned to an instance of a given resource (Figures 1& 3 and Abstract & par. 158; retrieving monitoring description and configurations of resource instance).

Claim 3: further comprising: receiving a selection of a given resource monitor to

be provisioned for the instance of the given resource (Figures 1 & 3 and Abstract & par. 5 & 12 & 14-18 & 158; externally/internally measured parameters, monitoring gateway and monitoring entity); and storing a monitor configuration profile for the given resource monitor in association with the resource monitor instance configuration profile (Figures 1 & 3 and Abstract & par. 5 & 12 & 14-18; storing in repository).

Claim 4: further comprising: receiving at least one value for a parameter for the given resource monitor, wherein the monitor configuration profile includes the at least one value for a parameter (Figures 1 & 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured components and monitoring requirements).

Claim 5: wherein receiving at least one value for a parameter for the given resource monitor includes presenting an interface to define parameters for the given resource monitor based on a monitor specification for the given resource monitor (Figures 1 & 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured components and monitoring requirements).

Claim 6: further comprising: deploying the given resource monitor in accordance with the monitor configuration profile (Figures 1 & 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured parameters, monitoring gateway, monitoring entity and binding monitors to entities).

Claim 7: wherein deploying the given resource monitor further includes: determining whether manual intervention is required for the given resource monitor; and responsive to manual intervention being required for the given

resource monitor, interacting with an administrator to receive at least one value for a parameter (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18 & 90; externally/internally measured parameters, monitoring gateway, monitoring entity and deployment manager).

Claim 8: further comprising: storing response parameters and values in a response profile (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18 & 90; externally/internally measured parameters, dynamically changing monitoring attributes, monitoring gateway and monitoring entity).

Claim 9: further comprising: deprovisioning the given resource monitor using the response parameters and values in the response profile (Figures 1& 3 and Abstract & par. 92- 95; dynamically changing monitoring attributes, monitoring gateway and monitoring entity).

Claim 10: further comprising: capturing output parameters and values of a monitor deployment and storing them to the response profile (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18; storing in repository).

Claim 11: wherein the instance of the given resource is a resource of a type selected from the group consisting of server hardware, network hardware, storage hardware, operating system software, database middleware software, application software, and monitoring software (Figures 1& 3 and Abstract & par. 5 & 12 & 14-18; externally/internally measured parameters, monitoring gateway and monitoring entity).

Claims 12-22 list all the same elements of **claims 1-11**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claims 1-11** applies equally as well to **claims 12-22**.

Claims 23-25 lists all the same elements of **claims 1-3**, but in a computer program product form rather than method form. Therefore, the supporting rationale of the rejection to **claim 1-3** applies equally as well to **claim 23-25**.

Examiner Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Response to Arguments

6. Applicant's arguments with respect to **claims 1- 25** have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MACEEH ANWARI whose telephone number is (571)272-7591. The examiner can normally be reached on Monday-Friday 7:30-5:00 PM ES.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.A.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2144